THE HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.No.27474/1995

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1. E.Pedda Reddemma and others ..Petitioners

V.

1. The District Collector, Chittoor and others. ..Respondents.

THE HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.No.27474/1995

ORAL ORDER

In this writ petition filed under Art. 226 of the Constitution, the petitioners challenge the simultaneous approval of the notification dt. 7-3-1994 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short “the Act”) and Section 6 declaration dt. 7-3-1994.

The only ground raised by the petitioners is that Section 4 (1) notification and declaration under Section 6 of the Act were approved by the Collector in his proceedings RC No.D11/4915/94 dt. 7-3-1994, which were published in the Chittoor District Gazette dt. 7-3-1994 and 8-3-1994 respectively, is contrary to the provisions of Section 17(4) of the Act. The same has not been disputed by the learned Government Pleader for Land Acquisition.

The Apex Court in ***STATE OF UP V. RADHEY SHYAM NIGAM*** while interpreting Section 17(4) of the Act held as under:

> “It is true that the expression "after the date of the publication of the notification" introduced in S.17(4) can be explained away as making no change from the provisions of law by reading it along with the amendment made in Section 4 whereby in different situation in S. 4, the last date of publication of the notice has been determined as the date of the publication of the notification and similarly in S. 6 a date of the publication of the notice has been provided for. But the words "after the date of the publication of the notifications' in sub-sec. (4) of S. 17 read simplicitor clearly indicate that declaration under S. 6 had to be made after the publication of the notification meaning thereby subsequent to the date of the publication of the notification. It appears to us that there is nothing in the scheme of the Act which militates against such a construction. The fact that at times where emergency provisions are invoked emergent action may be taken but in such a situation in view of the state of law that was before it, the legislature has made a conscious change which cannot be explained away merely because this is as a consequence of the changes Ss. 4 and 6 of the Act.”

In view of the law declared by the Apex Court in the above cited case, it is evident that the declaration under Section 6 of the Act was approved on 7-3-1994 and published in the District Gazette on 8-3-1994 along with notification under Section 4(1) dt.7-3-1994 without following the mandatory provisions of Section 17(4) of the Act, therefore, it is *void abinitio* and the same is liable to be quashed and it is accordingly quashed. Even if the said declaration is quashed, the authorities are not precluded from issuing fresh declaration after excluding the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4 (1) is stayed by an order of the Court in view of Explanation-I of proviso (ii) to Section 6 (1). But the same will not enure to the benefit of the authorities for the simple reason that Section 4(1) notification was published in the District Gazette on 7-3-1994, whereas this court issued notice before admission and granted stay on 6-12-1995 ie., nearly after one year nine months after 4(1) notification and Section 6 declaration were published in the District Gazette. Once declaration issued under Section 6 of the Act is quashed, in view of the law declared by the Constitutional Bench of the Apex Court in ***PADMASUNDARA RAO V. STATE OF TAMILNADU*** notification issued under Section 4(1) cannot be saved and the same is liable to be quashed and it is accordingly quashed.

Accordingly, the writ petition is allowed and Section 4(1) notification and Sec.6 declaration are quashed and all further proceedings including taking possession of the land of the petitioners, if any, will be *non est* in the eye of law. No costs.

Kmr 13-3-2006